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OFFICE OF PETITIONS

In re Application of	:
Judd	: DECISION REFUSING
Application No. 10/821,112	: STATUS UNDER
Filed: April 8, 2004	: 37 CFR 1.47(b)
Attorney Docket No. JUDD01-00002	:
For: VIRTUAL ANTENNA TECHNOLOGY	:
(VAT) AND APPLICATIONS	:

This is in response to the petition under 37 CFR 1.47(b), filed October 25, 2004 (certificate of mailing date October 21, 2004).

The petition is dismissed.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on April 8, 2004 without an executed oath or declaration. Accordingly, on June 21, 2004, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a filing fee, and a surcharge for their late filing.

In response, on October 25, 2004 (certificate of mailing October 21, 2004), a petition for a two month extension of time and required fee, a surcharge, a basic filing fee, and the instant petition were filed. The petition states that the non-signing inventor Mano Dorsey Judd was e-mailed the application on May 11, 2004 and that a copy of the declaration and power of attorney was later proffered to him during the course of multiple conversations.

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration;
- (2) an acceptable oath or declaration;
- (3) the petition fee;
- (4) a statement of the last known address of the non-signing inventor;
- (5) proof of proprietary interest; and
- (6) proof of irreparable damage.

Applicant lacks item (1), (2), (5) and (6) set forth above.

As to item (1), Applicant has failed to establish that the inventor has refused to sign the declaration. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events.

Daniel E. Venglarik submits that Mr. Judd was e-mailed the application on May 11, 2004 and then subsequently, a declaration and power of attorney was proffered to Mr. Judd during the course of multiple conversations.

The Office must be certain that Mr. Judd received the e-mailed application and that he was apprised of the application to which the subsequently proffered declaration was directed. On the first issue, it is not clear that the e-mail was received by Mr. Judd. On the second issue, since the declaration and power of attorney was proffered to Mr. Judd after the application was e-mailed and during the course of multiple conversations, it is not clear that Mr. Judd knew to which application the declaration was directed.

Petitioner is asked to submit documentary evidence, such as copies of e-mails, showing that Mr. Judd had an opportunity to examine the application papers and that Mr. Judd refused to return a signed declaration.

Any written refusal to sign the declaration should be included as documentary evidence in any reconsideration petition. If there is an oral refusal, the facts surrounding the refusal should be included in a declaration by a party with first hand knowledge of the refusal. If it is concluded by the 37 CFR 1.47 applicants that a non-signing inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented. The declaration has not been signed by a properly empowered representative of the Rule 1.47 applicant. **No one** has signed the declaration.

Where a corporation is the Rule 47(b) applicant, an officer (President, Vice-President, Secretary, Treasurer, or Chief Executive Officer) may sign the declaration on behalf of the corporation. Another individual may sign for the corporation, but an officer of the corporation must authorize the individual to sign on its behalf. As stated in the MPEP 409.03(b), where an oath is signed by a registered attorney on behalf of a corporation, either proof of the attorney's authority in the form of a statement signed by an appropriate corporate officer must be submitted, or the attorney may simply state that he is authorized to sign on behalf of the corporation.

The Office requires petitioner to submit a new declaration with the signer's name and title listed thereon in addition to the information pertaining to the inventor. As stated above, the signer must be authorized to bind the corporation. An oath or declaration in compliance with 37 CFR 1.63 signed by the Rule 1.47 applicant on behalf of the inventor is REQUIRED. See MPEP 409.03(b).

As to item (5), Rule 47 applicant has failed to show or provide proof that Davis Munck, P.C. has sufficient proprietary interest in the subject matter to justify the filing of the application (see MPEP 409.03(f)). Acceptable proof would include a copy of the employment agreement between the non-signing inventor and the Rule 47(b) applicant, a copy of an assignment agreement showing that the invention disclosed in the application is assigned to the Rule 47(b) applicant, or a legal memorandum signed by an attorney familiar with the law of the jurisdiction stating that a court of competent jurisdiction would by the weight of authority in that jurisdiction award the title of the invention to the Rule 47(b) applicant;

As to item (6), Rule 47 applicant failed to provide proof of irreparable damage (see MPEP 409.03(g)). A statement by Rule 47(b) applicant that the filing is necessary to preserve the rights

of the parties would be sufficient.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

By FAX: (703) 872-9306 – ATTN: Office of Petitions

Telephone inquiries should be directed to the undersigned at (571) 272-3230.



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